



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

Matter of: Pacific Northwest Bell Telephone Company,  
Mountain States Telephone Company  
File: B-227850  
Date: October 21, 1987

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### DIGEST

1. Requirement for zone-wide management of telephone contract, which excludes telephone companies that can offer for only part of zone, unduly restricts competition where management is site-oriented and record does not establish that number of sites would differ if multiple contractors covered zone or that the requirement otherwise is a legitimate need of agency.
2. General Accounting Office sees no reason why agency should not evaluate 10 year lease of telephone services, with an option for an additional 5 years, against 15-year systems life of purchased systems. A 10 year lease renewable solely at the discretion of the government would not violate provisions of 40 U.S.C. § 481 since government would not be obligated for more than 10 years.

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### DECISION

Pacific Northwest Bell Telephone Company and Mountain States Telephone Company protest request for proposals (RFP) No. KET-LH-87-0008 issued by the General Services Administration (GSA). The protesters contend that the solicitation unreasonably restricts competition and unfairly discriminates against the protesters. We sustain the protest.

The RFP provides for the establishment of a single 10-year indefinite quantity contract for local telecommunications services and management to replace existing facilities for the GSA Office of Information Resources Management Service (IRMS) Pacific Zone, which includes the states of Arizona, California, Idaho, Nevada, Oregon and Washington. Under the RFP, the contractor will be required to provide state-of-the-art digital telecommunications equipment and/or services to federal offices within the Pacific Zone. As amended, the RFP provides for the evaluation of purchase, lease with option to purchase, lease to ownership, and lease

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arrangements. The RFP contemplates that the single contractor will provide centralized management for the entire zone.

The RFP was issued as part of a program, known as the Aggregated Switch Procurements, or ASPs, initiated by GSA to acquire local telephone and communications services for federal agencies within large geographic areas. There are two basic ways in which GSA might acquire local services. In the first case, GSA could acquire (by purchase or otherwise) multiple interconnected private branch exchanges (PBXs) for installation in federal facilities. Alternatively, GSA could acquire similar services from the local telephone companies like the protesters, either through normal tariffs or through a variety of local contract arrangements approved by local regulatory bodies. In the latter case, the government would not own the switching capabilities and services would be obtained on a basis analogous to a lease.

GSA considers that PBX systems would have a systems life of 15 years and states that contracts for services from local telephone companies are limited to 10 years by the provisions of 40 U.S.C. § 481 (1982). See, e.g., General Telephone Company of California, B-190142, Feb. 28, 1978, 78-1 CPD ¶ 148, aff'd, Dec. 7, 1978, 78-2 CPD ¶ 395. To account for the added 5-year useful life which GSA expects that a PBX might provide, for evaluation purposes the RFP provides that PBX offers will be credited in year 10 with one-third of their cost.

GSA explains that it implemented the zonal approach because prior procurements on smaller regional scales consumed too much time and the ASP systems must be in place by 1990 in order to provide access to FTS-2000, which is planned to be in place by 1990. GSA states that it could not accomplish this objective if it could not aggregate these procurements. GSA also contends that centralized zonal management would provide more effective oversight of system operations and services and reduce the added layer of oversight that would be required if systems were procured on a regional basis. GSA notes that the contracting officer determined that centralized management on a zonal basis best satisfies the government's minimum needs and is consistent with the reorganization of GSA's regional IRMS organizations along zonal lines. GSA also explains that the credit applied in its cost evaluation for PBX systems is intended to compensate for the fact that government-owned PBX systems would still be under government control and available for use after year 10 of the contract, while there would be no equivalent value after expiration of a 10-year lease arrangement.

The protesters are two of the local telephone companies, known as Regional Bell Operating Companies (BOCs or RBOCs) that are offspring of the AT&T divestiture agreement. See United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1013 (1983); United States v. Western Electric Co., 569 F. Supp. 1057 (D.D.C. 1983), aff'd sub nom., California v. United States, 464 U.S. 1003 (1983). The protesters contend that the divestiture agreement prohibits them from offering services outside of their respective regions, and argue that because GSA's Pacific Zone spans several regions, they are unfairly precluded from participation in the competition. The protesters also assert that the method prescribed in the RFP for comparing lease and purchase alternatives unfairly discriminates against the RBOCs. The protesters point out that GSA has previously conducted ASP procurements on a regional basis, which comported more with their exchange limitations, and contend that GSA's purported need to accelerate these procurements is due to poor planning on GSA's part. In short, the protesters characterize GSA's zonal approach as an impermissible geographic restriction imposed for reasons of administrative convenience. However, the protesters also state that they could have competed within the zonal procurement if they were allowed to compete for only that part of the zone which falls within their respective regions. In other words, they could compete within the zonal approach, but just not for the entire zone.

GSA contends that the determination to conduct this procurement on a zonal basis and the selection of the method of evaluating lease and purchase offers were management judgments within GSA's discretion. GSA argues that the protesters have not demonstrated that these determinations were unreasonable. GSA also asserts that, in any event, in the period since the AT&T divestiture agreement the RBOCs have been freed from geographic restrictions and, therefore, could have competed and were not prejudiced by the total package requirement. In this connection, GSA contends that since the protesters did not submit proposals by the closing date for receipt of proposals, they are not interested parties within the meaning of our Bid Protest Regulations, 4 C.F.R. part 21 (1987).

The protesters' claim that they could have participated in the Pacific Zone competition, so long as they did not have to compete for the entire zone, essentially is an objection to the aggregation of multiple regions into a single zone for procurement purposes, i.e., the total package concept that accompanies GSA's zonal approach. We therefore will focus on this question. A number of additional objections raised by the protesters were resolved in amendments to the

RFP issued after this protest was filed; these questions will not be addressed.

The question of whether the RBOCs could provide telephone services outside of their respective regions without violating the terms of the divestiture decree is, at best, unsettled. In this regard, we note that the Circuit Court of Appeals for the District of Columbia has stated that the AT&T divestiture decree does not prevent the RBOCs from providing exchange services outside their geographic regions. United States v. Western Electric Co., Inc., 797 F.2d 1082 (D.C. Cir. 1986). This opinion, however, concerned the application of geographic restrictions to specialized services--cellular telephones and paging services--for which line-of-business restrictions imposed by the divestiture decree already had been lifted; the court explicitly distinguished these services from the more traditional telephone services being acquired under this RFP.

A more recent opinion, issued by the United States District Court for the District of Columbia in conjunction with that court's periodic review of the AT&T divestiture, specifically addresses the line-of-business restrictions. United States v. Western Electric Company, et al., D.D.C. Civil Action No. 82-0192, Slip Op., Sep. 10, 1987. The court, in affirming the restrictions, points out that section II(D)(1) of the divestiture decree prohibits the RBOCs from providing interexchange telecommunications services, that is, services between RBOC local exchange areas. Because GSA's Pacific Zone spans more than one local exchange area, it would appear that for either of the protesters to provide service to the entire zone could require violation of the divestiture decree's specific restrictions. In our view, the District Court opinion lends credence to the protesters' reluctance to compete. For this reason, we find GSA's argument that the protesters are not interested parties because they could have but did not submit proposals to be without merit.

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 41 U.S.C. § 253(a)(2) (Supp. III 1985). Because procurements on a total package basis can restrict competition, we have objected to such procurements where a total package approach did not appear to be necessary to satisfy the agency's minimum needs. Thus, for instance, we have objected to a total package approach (1) undertaken for reasons of mere administrative convenience, MASSTOR Systems Corp., B-211240, Dec. 27, 1983, 84-1 CPD ¶ 23 (justified on other grounds); Hvide Shipping, Inc., B-194218, Aug. 30, 1979, 79-2 CPD

¶ 166 (justified on other grounds); or (2) where the agency provided no justification for such an approach.

Conversely, we have denied protests against the use of a total package approach where (1) procurement by means of separate procurements involved unacceptable technical risks or defeated a requirement for interchangeability or compatibility within a computer system, MASSTOR Systems Corp., B-211240, *supra*; Interscience Systems, Inc.; Amperif Corp., B-201943, B-202021, Aug. 31, 1982, 82-2 CPD ¶ 187; Amdahl Corp., B-198911.2, Mar. 27, 1981, 81-1 CPD ¶ 231; (2) a single contractor was required to assure the effective coordination and integration of interrelated tasks, Batch-Air, Inc., B-204574, Dec. 29, 1981, 81-2 CPD ¶ 509; Consolidated Service, Inc. of Charleston, B-199407, Sept. 21, 1981, 81-2 CPD ¶ 228; Capital Recording Co., Inc., B-189319, Feb. 15, 1978, 78-1 CPD ¶ 126, or (3) the agency's relatively small staff could not administer several contracts as effectively as one. Eastern Trans-Waste Corp., 63 Comp. Gen. 519 (1984), 84-2 CPD ¶ 126.

GSA's offered justifications for use of the total package approach are premised on the need to conduct fewer procurements so that the ASP systems can be installed in time to provide access to FTS-2000, and the contracting officer's determination, noted above, that centralized management on a zonal basis would best satisfy the needs of the government. We find GSA's first justification unpersuasive, however. As stated above, the protesters assert that they could have competed for regional contracts within a single zonal procurement, and there is no evidence from GSA that it would have unduly delayed the zonal procurement for them to do so. As the protesters point out, the procurements could have been structured to provide for proposals on California and Nevada as one unit and Washington, Oregon, Idaho and Arizona, as a second, with alternative offers to serve all the states, and GSA could then select either one offeror to serve the entire zone or two contractors to serve these two areas within the zone, whichever was in the best interests of the government.

As to GSA's second justification, given GSA's organization of its IRMS function into zones, it seems sensible for GSA to manage centrally on a zonal basis. This does not, however, equate to a need for the contractor(s) to provide centralized management on the same basis without reference to the nature and function of the management services to be performed.

In this regard, the RFP stipulates that the contractor manage with minimal government oversight and requires that the contractor have extensive dealings directly with using

agencies. Agencies, for instance, may order directly from the contractor such items as telephone lines and features, changes in features or lines, system training, proprietary telephone sets, and management services and assistance in identifying and defining agency requirements, and get bills and related information directly from the contractor. With regard to GSA, the contractor is to provide management summary reports, including extensive information regarding system utilization, performance and problems on a per site basis, and an overall bill, categorized by agency billing account codes and using a GSA-supplied algorithm for cost allocation which will "provide direct automated electronic interface."

The required management functions specified in the RFP persuade us that responsibility for the day-to-day management of the ASP communications resources rests with the individual using agencies, and that GSA's principal function is to provide management of the common resources, such as shared PBXs or connecting lines, and oversight of the contractor's other responsibilities, such as whether the contractor's performance in resolving trouble reports falls within acceptable limits. We find nothing, however, which suggests that the addition of an added contractor to the zone would be unduly burdensome to GSA's performance of these functions, particularly in view of the per-site and per-agency emphasis on contractor reporting. Certainly, GSA has not established that the number of sites or agencies would differ greatly if more than one contractor were involved or that the automated processing of bills would be unduly complicated. Moreover, the RFP already provides for the designation of contracting officer's technical representatives for specific geographic areas, which suggests that GSA may already be prepared to perform at least some management functions on a regional basis regardless of the number of contractors. In short, we are not persuaded that zone-wide centralized management is a legitimate need rather than a requirement established for GSA's administrative convenience, particularly in view of its effect on the competition.

The protesters also contest GSA's use of a 15 year life expectancy for PBX systems in the evaluation of proposals and charge that it unfairly discriminates against the RBOCs. The protesters argue that if GSA does use a 15 year systems life for PBX systems, GSA would obtain a more realistic cost comparison between PBX and telephone company alternatives if it compared the costs of each over the same period of time, i.e., 15 years. The protesters contend that this could be accomplished by providing for a 5 year lease option in addition to the 10 year lease term.

We think there is merit to the protesters' position. There is no reason to assume that the expected life of a 10 year lease with a 5 year option would be less than the expected life of the PBX systems. While it is obvious that GSA might elect not to exercise the option, it is also possible that GSA might elect to replace PBX systems prior to 15 years. A 10 year lease which is renewable solely at the discretion of the government would not violate the provisions of 40 U.S.C. § 481 since the government would not be obligated to continue the lease beyond the initial 10 year period. We see no reason, therefore, why GSA should not evaluate an offer for a 10 year lease with an option for an additional 5 years. We think it would be more consistent with GSA's obligation to ascertain the lowest overall cost over the total systems life for GSA to do so. Cf. Chesapeake and Potomac Telephone Company, 65 Comp. Gen. 380 (1986), 86-1 CPD ¶ 228

The protest is sustained. By separate letter to the Administrator we are recommending that the procurement be canceled and the solicitation reissued to permit the RBOCs to compete within the zonal procurements for their respective regions and that, in conjunction with restructuring the solicitation, GSA reassess its approach to the cost evaluation.

*for Milton L. Hester*  
Comptroller General  
of the United States